

KENYON & KENYON LLP  
One Broadway  
New York, NY 10004  
Telephone: (212) 425-7200  
Facsimile: (212) 425-5288  
Email: cweiss@kenyon.com

Federal Bar No. CW-2628

Attorneys for Defendant  
Radica Enterprises, Ltd. d/b/a Radica USA, Ltd.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

|   |   |                                   |
|---|---|-----------------------------------|
| Infinite Machines, LLC,                       | ) | Civil Action No. 07-8625-AKH      |
|   | ) |                                   |
| Plaintiff,                                    | ) | <b>DEFENDANT RADICA</b>           |
|   | ) | <b>ENTERPRISES, LTD. d/b/a</b>    |
| v.  | ) | <b>RADICA USA, LTD.'S</b>         |
|   | ) | <b><u>ANSWER TO COMPLAINT</u></b> |
| Radica Enterprises Ltd. d/b/a Radica USA Ltd. | ) |                                   |
| and Radica Games Limited                      | ) | <b>DOCUMENT</b>                   |
|   | ) | <b>ELECTRONICALLY FILED</b>       |
| Defendants.                                   | ) |                                   |
|   | ) |                                   |

Defendant Radica Enterprises, Ltd. d/b/a Radica USA, Ltd. (“Radica” or “Defendant”), by way of answer to the Complaint of Infinite Machines, LLC (“IM” or “Plaintiff”) filed October 4, 2007, herein (the “Complaint”), alleges as follows, with knowledge concerning Radica’s own acts and on information and belief concerning all other allegations, and with the paragraph numbering herein corresponding to the paragraph numbering in the Complaint:

**JURISDICTION AND VENUE**

1. Radica admits that IM purports to base this action on the causes of action recited in this paragraph, but otherwise denies the same.

2. Denied.

**THE PARTIES**

3. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

4. Denied. Radica Enterprises, Ltd. d/b/a Radica USA, Ltd. is a Nevada corporation with a principal place of business at 16650 Westgrove Drive, Suite 500, Addison, TX 75001.

5. Admitted.

6. Denied.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

7. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

8. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

9. Radica admits that it is a leading developer, manufacturer and distributor of electronic handheld and table top games. Radica also admits that in September of 2005 Radica contacted John C. Boucard to discuss a toy concept. Otherwise denied.

10. Denied as to this defendant.

11. At present, Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation, except that Radica admits solely that Mr. Wilson disclosed to Mr. Boucard a concept called Bitty Bites.

12. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

13. Denied.

14. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

15. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

16. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

17. Radica admits only that between September and November 2005, Mr. Boucard and Radica exchanged emails and had conversations regarding the Bitty Bites concept. Otherwise denied.

18. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

19. Denied.

20. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation, except that Radica admits solely that it met with Mr. Boucard in New York in October, 2005.

21. Radica is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation.

22. Radica admits only that Mr. Boucard and Radica exchanged draft option and license agreements and that no mutually agreeable terms were agreed upon. Otherwise denied.

23. Admitted.

24. Radica admits only that a display regarding the planned UB Funkeys product was presented at an internal toy fair. Radica is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph, and on that basis denies each and every remaining allegation.

25. Radica admits only that Mr. Boucard contacted Radica regarding a dispute and that it remains unresolved. Otherwise denied.

26. Radica admits that the UB Funkeys product was released in August 2007. With respect to the remaining allegations, Radica admits only the following: a UB Funkeys starter set includes a UB Hub with a USB cable that plugs into a personal computer; there are multiple Funkeys available which are capable of being inserted into the Hub; an owner can go to [www.ubfunkeys.com](http://www.ubfunkeys.com), which is an information website; an owner, using its PC, can also play games involving "Funkeys Town" using the Funkey placed on the Hub; these games also allow a player to win coins that can be used in the game to buy items to decorate their "crib". Otherwise denied.

27. Radica admits only that Robert Eckert, CEO of Mattel, and Chris Wilson of Radica have been quoted as stating the indicated language.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

### **CLAIM I**

32. Radica incorporates its responses to Paragraphs 1 through 31 as if fully set forth herein.

33. Radica admits that this action purports to state a claim by Plaintiff for breach of contract and denies the validity of such a claim.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

### **CLAIM II**

38. Radica incorporates its responses to Paragraphs 1 through 37 as if fully set forth herein.

39. Radica admits that this action purports to state a claim by Plaintiff for misappropriation of property and denies the validity of such a claim.

40. Denied.

41. Denied.

**CLAIM III**

42. Radica incorporates its responses to Paragraphs 1 through 41 as if fully set forth herein.

43. Radica admits that this action purports to state a claim by Plaintiff for unfair competition and denies the validity of such a claim.

44. Denied.

45. Denied.

**AFFIRMATIVE DEFENSES**

46. The Complaint, and each claim therein, fails to state a claim upon which relief can be granted.

47. This Court lacks subject matter jurisdiction over this dispute under 28 U.S.C. § 1332.

48. Venue is improper in this District.

49. IM's claims for equitable relief are barred by the doctrine of unclean hands.

50. The Complaint, and each claim therein, is barred by the doctrines of estoppel, acquiescence, laches and waiver.

51. Defendant has not breached any valid or enforceable contract.

52. Defendant has not misappropriated any property belonging to Plaintiff.

53. Defendant has not misappropriated any property belonging to Plaintiff and Defendant does not unfairly compete with Plaintiff.

54. Plaintiff's disclosure to Defendant lacked novelty.

WHEREFORE, Defendant Radica Enterprises, Ltd. d/b/a Radica USA, Ltd. demands judgment against Plaintiff Infinite Machines, LLC, dismissing all counts and claims of the

Complaint with prejudice; awarding Defendant its attorneys' fees and costs of suit; and for such other and further relief as may be appropriate.

KENYON & KENYON LLP

Attorneys for Defendant Radica Enterprises, Ltd.  
d/b/a Radica USA, Ltd.

By: /s Charles A. Weiss  
CHARLES A. WEISS  
(CW-2628)

DATED: October 30, 2007  
New York, New York

Of counsel:

John R. Hutchins, Esq.  
Kenyon & Kenyon LLP  
1500 K Street, N.W.  
Washington, DC 20005  
(202) 220-4200

**CERTIFICATE OF SERVICE**

I hereby certify that on the date shown below, I caused the foregoing **Defendant Radica Enterprises, Ltd. d/b/a Radica USA Ltd.'s Answer to Complaint** to be served by operation of the Court's ECF system on counsel for plaintiff.

\_\_\_\_\_  
/s Charles A. Weiss  
CHARLES A. WEISS  
(CW-2628)

DATED: October 30, 2007  
New York, New York